LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE | CHAIRMAN ADAM PUTNAM
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H.R. 6604 – Commodity Markets Transparency and Accountability Act of 2008

EXECUTIVE SUMMARY

This legislation was introduced by Representative Collin Peterson (D-MN) on July 24, 2008. This legislation is similar the version of H.R. 6604 which was defeated under suspension of the rules on July 30, 2008, by a vote of 276-151.

Oil is one of many commodities that is bought and sold through future contracts for its delivery and sale. Speculators purchase these contracts based on how they expect the market will perform in the future, or to lock in prices as is the case with industries like airlines. H.R. 6604 establishes trading limits to crack down on "excessive speculation," and grants the Commodity Futures Trade Commission several other new authorities.

The Administration released a veto threat against H.R. 6604 on July 30, 2008, arguing that the legislation "offers poorly targeted short-term measures that do nothing to address the fundamentals of supply and demand that bear the primary responsibility for current high energy prices." Liberal economist Paul Krugman stated on June 17, 2008, "Hyperventilation over oil-market speculation is distracting us from the real issues."

H.R. 6604 is expected to be considered by the House on September 18, 2008, under a closed rule.

FLOOR SITUATION

This legislation was introduced by Representative Collin Peterson (D-MN) on July 24, 2008. The bill was referred to the Committee on Agriculture, but was never considered. This legislation is similar to the version of H.R. 6604 which was defeated under suspension of the rules on July 30, 2008, by a vote of 276-151.

H.R. 6604 is expected to be considered under a closed rule. The rule:

- Provides one hour of debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Agriculture;
- Waives all points of order against consideration of the bill except those arising under clause 9 (earmarks) or 10 (PAYGO) of rule XXI;
- Provides that the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted and that the bill, as amended, shall be considered as read;
- Waives all points of order against the bill, as amended. This waiver does not affect the point of order available under clause 9 (earmarks) of rule XXI;
- Provides one motion to recommit with or without instructions; and
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

H.R. 6604 is expected to be considered on the floor of the House on September 18, 2008.

BACKGROUND

The recent high price of gasoline has caused debate over proposed energy policies. Contributing to the high price of gas are factors such as political instability and violence in oil producing regions as well as simple supply and demand, with increasing global demand for oil (most notably in developing countries such as China and India) and limited U.S. refining capabilities.

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Oil is one of many commodities that is bought and sold through future contracts for its delivery and sale. Speculators purchase these contracts based on how they expect the market will perform in the future, or to lock in prices as is the case with industries like airlines. Whether speculators made a profit on the settlement or sale of these contracts depends on the price of oil at the time it matures. Some critics argue that the increased number of investors in the oil commodities market is causing the price of oil to rise.

The Commodity Futures Trading Commission (CFTC) was created by Congress in 1974 as an agency to regulate commodity futures markets in the U.S. Today, the CFTC assures the economic efficacy of futures commodity markets by protecting market participants against fraudulent and abusive trading practices, and encouraging competitiveness and efficiency among investors. Oil futures are exchanged on the New York Mercantile Exchange (NYMEX), which is regulated by the CFTC along with all other U.S. commodities exchanges. Oil commodities are also traded on other international exchange markets such as those in London and Dubai.

On June 10, 2008, the CFTC announced that they will create an Interagency Task Force to study recent developments in futures commodity markets and the high price of tradable commodities, such as oil. Specifically, the commission will examine practices such as investor practices, supply and demand factors, as well as the effects that speculators have in commodity markets. The CFTC released a report on July 22, 2008, assessing fundamental market factors affecting the crude oil market. The report concludes that fundamental supply and demand offer the best explanation for the recent increases in crude oil prices.

CFTC – Glossary of Terms

SUMMARY

Speculative Limits and Transparency

H.R. 6604 prohibits the Commodity Futures Trade Commission (CFTC) from allowing a foreign board of trade to provide its members or participants located in the U.S. with access to the electronic trading and order matching system for energy and agricultural commodities, unless the board of the foreign board sets transparency requirements similar to those on U.S. exchanges.

Such requirements include providing the CFTC with information necessary to publish reports on aggregate trader positions in foreign commodities markets and notifying the CFTC of any change regarding the position limits that the foreign board of trade or foreign futures authority will adopt and enforce. These requirements will not take effect until 180 days after enactment.

Persons registered with the CFTC, or those exempt from registration by the CFTC, may not be held liable for violations of the provisions in H.R. 6604 if the person reasonably believes that the commodity transaction they are involved with is being made subject to the rules of a legally organized foreign board of trade and not determined by the CFTC to be in violation of the provisions of the CFTC.

Publication and Disaggregation of Index Funds in Energy and Agricultural Markets

The legislation requires the CFTC to publish weekly the number and total value of index and futures commodity transactions in energy and agricultural markets. Also to be published is information on speculative positions in futures markets.

Detailed Reporting From Index Traders and Swap Transactions

The bill requires that the CFTC place record keeping and reporting requirements on index traders and swap transaction dealers. Records and reports are to detail information related to their dealings in futures contracts markets, with foreign boards of trade, and electronic trading facilities. The CFTC is to issue proposed requirements within 60 days of enactment, and a final set of requirements within 120 days of enactment.

Trading Limits Preventing Excessive Speculation
The Commission is to establish limits on the positions that may be held by a single person with respect to the future sale of agriculture and energy commodities contracts traded on the open market, either through contract market, a derivatives transaction facility, or an electronic trading facility.

Within 150 days of enactment, the CFTC is to assemble and convene a 'Position Limit Agricultural Advisory Group' and a 'Position Limit Energy Group.' These groups are to consist of members from commercial short hedgers, commercial long-hedgers, non-commercial participants in futures and designated contract markets.

These groups are to submit advisory recommendations regarding position limits, and whether the limits should be administered by the CFTC or by the registered entity on which the commodity is listed. These advisory groups should report within 60 days of convening and annually thereafter.

CFTC Administration
As soon as possible after enactment, the CFTC is to appoint at least 100 full time employees (in addition to those already employed by the CFTC) whose purpose will be to increase public transparency of agriculture and energy futures markets and to help carry out the requirements implemented by H.R. 6604.

Review of Prior Actions
The bill requires the Commodity Futures Trading Commission to review, as appropriate, all actions taken by or on behalf of the Commission and any action taken pursuant to the Commodity Exchange Act by an exchange or other registered entity to ensure that such prior actions are in compliance with the provisions of this legislation.

Review of Over the Counter Markets
The bill requires the Commission to conduct a study to determine the effects of establishing position limits and the effects of establishing aggregate position limits for on-exchange and OTC transactions in physical-based commodities. It requires the Commission to hold at least two public hearings as a part of the fact gathering process in preparation for the report that they must submit to Congress within twelve months of the enactment of the bill.

Over-the-Counter Authority
H.R. 6604 directs the Commission to require routine reporting of over-the-counter transactions in the agricultural or energy commodities that are fungible, or interchangeable, with contracts traded on Designated Contract Markets (DCMs), Exempt Commercial Markets (ECMs), and Significant Price Discovery Contracts (SPDCs). The Commission is required to assess every reported transaction and issue a finding on whether the transaction has the potential to disrupt liquidity or price discovery on a registered entity, cause a severe market disturbance in the underlying cash or futures market for an agricultural or energy commodity, or prevent or impair the price of a contract listed for trading on a registered entity from reflecting the forces of supply and demand. If the commission makes a finding that the transaction causes the aforementioned impacts, then the commission may establish positions on these transactions.

> **Note: Over-the-Counter means the trading of commodities, contracts, or other instruments not listed on any exchange. OTC transactions can occur electronically or over the telephone.*

ADDITIONAL VIEWS

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According to a July 30, 2008, Statement of Administration Policy addressing H.R. 6604, "The Administration is concerned about the current high price of oil and its effect on consumers and the economy. On the basis of these concerns, the President recently lifted an executive prohibition on drilling for oil and natural gas on the Outer Continental Shelf, and urged Congress to remove similar legislative barriers in order to increase domestic production of oil and gas. The President has also repeatedly urged congressional action to: (1) remove the prohibition on completing commercial oil shale leasing regulations to allow access to this promising resource; (2) allow exploration in the Arctic National Wildlife Refuge; and (3) streamline the permitting process for expansions and reconfigurations of refineries.

The Administration is strongly opposed to H.R. 6604, which offers poorly targeted short-term measures that do nothing to address the fundamentals of supply and demand that bear the primary responsibility for current high energy prices. The bill will hurt the competitiveness of American futures markets and place significant, unnecessary burdens on CFTC staff. The new and sometimes redundant authorities and studies in the bill will consume significant CFTC resources and will divert the agency from its core mission of promoting fair and efficient futures markets. <u>If the bill were presented to the President in its current form, his senior advisors would recommend that he veto it."</u>

Full Statement of Administration Policy for H.R. 6604

COST

The Congressional Budget Office did not have a cost estimate available for H.R. 6604 as of September 17, 2008.

STAFF CONTACT

For questions or further information contact Adam Hepburn at 6-2302.